Williams Boniface Mobin Roy v Abdul Sani bin Abdul Kudus & Ors

HIGH COURT (KUALA LUMPUR) — COMPANIES (WINDING UP) NO WA-28NCC-1199–11 OF 2019
NADZARIN WOK NORDIN JC
18 SEPTEMBER 2020

Companies and Corporations — Winding up — Winding up due to mutual breakdown of trust between parties — Whether there were just and equitable grounds to wind up the company — Whether there was mutual breakdown of trust between petitioner and first respondent — Whether there was management deadlock of company — Whether there was no possibility for company to carry on its business operations — Companies Act 2016 s 465(1)(f)

This was a winding up petition of the petitioner seeking to wind up the third respondent pursuant to s 465(1)(f) and (h) of the Companies Act 2016 ('the CA') on the grounds that: (a) there was a mutual breakdown of trust between the petitioner and the first respondent; (b) there was a management deadlock of the company; and (c) there was no possibility for the company to carry on its business operations. The petitioner was seeking that: (i) the company be wound up as its affairs can no longer be carried out effectively; (ii) an independent auditor be appointed to carry out a special audit of all the accounting records and to carry out a valuation of the company and its properties; and (iii) the properties in the name of the company be sold with the net proceeds shared between the petitioner and second respondent equally. The company was established to carry on business to purchase or otherwise acquire for investment land, factories, houses, buildings, plantations and immovable property and to create freehold and leasehold ground rents and to make advances upon the security of the land or house or other property and generally to sell, lease or exchange land and house and other property whether real or personal and whether for valuable consideration or not. At the time of filing the petition, the petitioner held 49% equity while the first respondent held 51% equity in the company. The petitioner contended that on 22 June 1994, four new directors were appointed to the company who were the first respondent, the petitioner, the second respondent and Roniza bt Hashim and that on 27 February 1995, the company issued capital was raised to 100 ordinary shares of RM1 each and the paid up capital was RM100 which were allotted to the petitioner who held 48 shares and the second respondent who held 50 shares. Subsequently on 16 November 1995, it was submitted that the company's issued capital was increased to 100,000 ordinary shares of RM1 each and the paid up capital was RM100,000 with 48,951 of the shares being allotted to the petitioner and 50,949 shares being allotted to the second respondent. Rosniza

bt Hashim resigned as a director of the company on 20 March 2012. It was submitted that the company was formed as a quasi-partnership between the petitioner and the first respondent wherein all day to day management of the company was managed and handled by the first respondent. It was submitted that since 22 June 1994, it was mutually agreed by the first respondent that the petitioner and the first respondent would be of equal standing and hold equal partnership status in the company where both the petitioner and the first respondent would hold the shares in equal proportions. Consequently, the petitioner contends that as the petitioner and the first respondent were foreigners, they agreed to appoint the second respondent as a director and shareholder holding 51% shares with the addition 1% to be held in trust for the petitioner. It was submitted that between 22 July 2016 and 23 July 2016, the petitioner contacted the first respondent via email informing him that they should update all the company's documentation and bank statements for the past five years and settle any outstanding tax payable ('outstanding matters') and requested to the first respondent to forward to him the deed of release of the properties and the bank statements for the past five years ending in June 2016. Through another email, the first respondent informed the petitioner that the first respondent had appointed Messrs JB Lau & Khoo as the auditors of the company and one Fastrack Corporate Services as the company secretary to deal with issues pertaining to the company's accounts, secretarial and tax issues. This was contended by the petitioner to help the first respondent to handle the outstanding matters to be handled properly in accordance with proper accounting standards and better transparency. The petitioner alleged that the auditor and company secretary were unable to provide any updates on the outstanding matters despite carrying out its internal investigations and secretarial works which persisted until around February 2017 when the first respondent inform the company secretary that the petitioner will be calling to clarify the status of the company. It was thereafter alleged by the petitioner that the first respondent sent a text message to him intending to close down the company in order to avoid tax payments which shocked the petitioner who disagreed and demanded the accounts of the company be finalised and resolved and kept in proper order and tax be paid accordingly. The petitioner was informed that the company needed certain documents from the first respondent in order to complete the tax returns and the petitioner engaged the assistance of the company's former company secretary, TK Lim who then informed him that the first respondent had omitted to file any audited accounts or income tax returns to LHDN for and on behalf of the company since its incorporation. The petitioner than instructed that the services of TK Lim would be retained to update and file the necessary documents with the relevant authorities. The petitioned alleged that a large quantity of the company's bank statements were missing and TK Lim was therefore unable to complete the bookkeeping of the company, and of which the petitioner had attempted to obtain from the first respondent but the first respondent failed or refused to obtain the missing bank statements. It was thereafter submitted that the

petitioner informed the first respondent to sell his shareholding in the company and that the first respondent made an offer to purchase the petitioner's shares. The respondents alleged that the petitioner did not state that there was a pre-existing partnership or prior business relationship between the petitioner and the first respondent and that that as the day to day business was being run by the first respondent, the petitioner has no right to participate in the conduct of the business. The issues to be determine in this petition were: (1) whether there was just and equitable ground winding up the company; (2) whether there was a mutual breakdown of trust between the petitioner and the first respondent; (3) whether there was a management deadlock of the company; and (4) whether there was no possibility for the company to carry on its business operations.

Held, petition allowed and winding up order granted with costs of RM20,000:

(1) The issue as to whether the company was a conversion of a partnership to a private limited company was irrelevant as it was not the only element that can form an association between the parties. The issue on whether there exists a quasi-partnership was not a pre-condition for a just and equitable provision to be invoked and the court need not decide on the same (see paras 30–31).

(2) The court found that the petitioner and the first respondent were of equal standing and hold equal partnership status in the company where both petitioner and first respondent held the shares in equal proportions was being proven by the petitioner (see para 35).

(3) The fact that the memorandum and articles did not recognise shareholding by way of trust did not prevent the court from recognising the creation of a trust should the facts prove the same based on accepted principles of the law of trust (see para 38).

(4) The petitioner was not managing the company for the first ten years. The petitioner merely stated in an email that he was 'prepared to take over the administration' of the company with effect from year 2018 due to the first respondent's busy business schedule which clearly shows that the petitioner was not managing the company earlier as alleged. Further the petitioner had not participated in the management of the company merely by requesting for the documents in respect to the outstanding matters. In fact the petitioner was excluded from managing the company as seen from the numerous emails from the petitioner to the first respondent where the petitioner made repeated requests for the documents relating to the outstanding matters and for them to be sorted out (see paras 43–46).

(5) The contemporaneous records did not mention any breakdown of trust or management deadlock does not translate into the fact or was evidence

that such breakdown of trust or management deadlock did not exist. The court also did not agree with the respondents' contention that the petitioner's primary objective to wound up the company was to sell his 49% shareholding in the company solely on his terms. The court also held that delay in filling the petition did not show that the petitioner had condoned the breakdown in relationship as the court found from various emails (see paras 48 & 50–51).

(6) The first respondent had failed to resolved the accounts which caused the financial audit and tax returns of the company being unable to be submitted and the failure and/or refusal to cooperate with the petitioner with regard to the outstanding matters as the true reason for the breakdown in relationship. It is reasonable for the petitioner to no longer wish to proceed with the relationship. From the facts, it was apparent that the relationship between parties have deteriorated to a point where parties can no longer communicate with each other and would cause the company to be unable to function as a commercial entity as there was a breakdown in mutual trust and confidence between the parties (see paras 55 & 57).

[Bahasa Malaysia summary

Ini merupakan petisyen penggulungan pempetisyen yang cuba untuk menggulungkan responden ketiga selaras dengan s 465(1)(f) dan (h) Akta Syarikat 2016 ('Akta tersebut') atas alasan: (a) tidak lagi wujud kepercayaan antara pempetisyen dan responden pertama; (b) wujud kebuntuan dalam pengurusan syarikat; dan (c) tiada kebarangkalian untuk syarikat meneruskan operasi perniagaannya. Pempetisyen memohon agar: (i) syarikat digulungkan kerana urusannya tidak lagi boleh dijalankan secara berkesan; (ii) seorang juruaudit bebas dilantik untuk mengendalikan audit khas semua rekod perakaunan dan untuk menjalankan penilaian syarikat dan juga hartanahnya; dan (iii) hartanah yang didaftarkan atas nama syarikat dijual dan hasilnya dikongsi antara pempetisyen dan responden kedua secara sama rata. Syarikat tersebut ditubuhkan untuk menjalankan perniagaan untuk membeli dan mendapatkan untuk tujuan pelaburan tanah, kilang, rumah, bangunan, ladang, dan harta tidak boleh alih atau sebaliknya memperoleh untuk memdapatkan sewaan tanah pegangan kekal atau pegangan sementara dan untuk membuat pendahuluan untuk cagaran bagi tanah, atau rumah atau hartanah lain dan secara amnya untuk menjual, menyewakan atau menukar tanah dan rumah dan hartanah lain sama ada benar atau peribadi sama ada untuk pampasan bernilai atau tidak. Pada masa petisyen difailkan, pempetisyen pemegang 49% ekuiti manakala responden pertama memegang 51% ekuiti syarikat. Pempetisyen mengatakan bahawa pada 22 Jun 1994, empat pengarah baru telah dilantik di dalam syarikat yang merupakan, responden pertama, pempetisyen, responden kedua dan Roniza bt Hashim dan pada 27 Februari 1995, modal diterbitkan syarikat dinaikkan kepada 100,000

syer biasa pada RM1 setiap satu dan modal terbayar adalah RM100,000 dengan 48,951 syer diberikan keapda pempetisyen dan 50,949 syer diberikan kepada responden kedua. Rosniza bt Hashim meletakkan jawatan sebagai pengarah syarikat pada 20 Mac 2012. Ianya diakatakan bahawa syarikat yang diwujudkan adalah satu quasi-perkongsian antara pempetisyen dan responden pertama yang mana kesemua pengurusan harian syarikat diuruskan oleh responden pertama. Ianya dikatakan sejak 22 Jun 1994, adalah dipersetujui oleh responden pertama dan pempetisyen bahawa responden pertama dan pempetisyen akan mempunyai kedudukan yang sama dan kedua-duanya memegang status perkongsian yang sama dalam syarikat yang mana pempetisyen dan responden pertama akan memegang syer yang sama. Oleh itu, pempetisyen mengatakan bahawa kerena pempetisyen dan responden pertama merupakan orang asing, mereka bersetuju untuk melantik responden kedua sebagai pengarah dan pemegang saham memegang 51% saham dengan tambahan 1% dipegang atas amanah untuk pempetisyen. Ianya dihujahkan bahawa antara 22 Julai 2016 dan 23 Julai 2016, pempetisyen menghubungi responden pertama melalui emel memaklumkannya bahawa mereka perlu mengemaskini dokumentasi dan penyata bank syarikat untuk tempoh lima tahun terdahulu dan menyelesaikan semua cukai tertunggak ('perkara tertunggak') dan memohon responden pertama untuk menghantar kepadanya surat ikatan perlepasan hartanah dan penyata bank untuk tempoh lima tahun yang berakhir pada Jun 2016. Melalui satu lagi emel, responden pertama memaklumkan pempetisyen bahawa responden pertama telah melantik Tetuan JB Lau & Khoo sebagai juruaudit syarikat dan Fastrack Corporate Services sebagai setiausaha syarikat untuk menguruskan isu berkaitan dengan akaun syarikat, urusan kesetiausahaan dan isu cukai. Ini dikatakan oleh pempetisyen untuk membantu responden pertama untuk menguruskan perkara tertunggak dengan betul dan teratur selaras dengan piawaian perakaunan dan ketelusan. Pempetisyen mengatakan bahawa juruaudit dan setiausaha syarikat tidak boleh memberikan apa-apa perkembangan mengenai perkara tertunggak walaupun menjalankan siasatan dalaman dan tugas kesetiausahaannya yang berterusan sehingga lebih kurang Februari 2017 apabila responden pertama memaklumkan kepada setiausaha syarikat bahawa pempetisyen akan menelefon untuk menjelaskan status syarikat. Adalah selepas dari itu yang dikatakan oleh pempetisyen bahawa responden pertama telah menghantar satu pesanan ringkas kepadanya menyampaikan niat untuk menutup syarikat untuk mengelakkan pembayaran cukai yang mengejutkan pempetisyen yang tidak bersetuju dan meminta agar akaun syarikat dimuktamadkan dan diselesaikan dan disimpan secara teratur dan cukai dibayar sewajarnya. Pempetisyen dimaklumkan bahawa syarikat memerlukan beberapa dokumen daripada responden pertama untuk menyelesaikan pulangan cukai dan pempetisyen mendapatkan bantuan setiausaha syarikat terdahulu, TK Lim yang memaklumkan keapadanya bahawa responden pertama tidak memfailkan apa-apa akaun diaudit atau pulangan cukai kepada LHDN untuk atau bagi pihak syarikat sejak ianya ditubuhkan. Pempetisyen

kemudiannya mengarahkan agar perkhidmatan TK Lim akan digunakan untuk mengemaskini dan memfailkan dokumen yang perlu dengan pihak berkuasa yang berkenaan. Pempetisyen mengatakan bahawa kebanyakan penyata bank hilang dan oleh yang demikian, TK Lim tidak dapat melengkapkan simpan kira syarikat, yang mana pempetisyen cuba untuk mendapatkannya daripada responden pertama akan tetapi responden pertama gagal atau enggan untuk mendapatkan penyata bank yang hilang. Ianya adalah dihujahkan bahawa pempetisyen pertama memaklumkan kepada responden pertama untuk menjual pemilikannya dalam syarikat dan responden pertama membuat tawaran untnuk membeli syer pempetisyen. Responden mengatakan bahwa pempetisyen tidak menyatakan bahawa sudah wujud perkongsian atau perhubangan perniagaan terlebih dahulu antara pempetisyen dan responden dan memandangkan urusan perniagaan harian dikendalikan oleh responden pertama, pempetisyen tiada hak untuk melibatkan diri dalam pengendalian perniagaan. Isu untuk diputuskan dalam petisyen ini adalah sama ada: (1) wujud alasan adil dan saksama untuk menggulungkan syarikat; (2) sama ada tiada lagi kepercayaan antara pempetisyen dan responden pertama; (3) sama ada wujud kebuntuan pengurusan dalam pengurusan syarikat; dan (4) sama ada tiada kebarangkalian untuk syarikat meneruskan operasi perniagaannya.

Diputuskan, membenarkan petisyen dan perintah penggulungan diberikan dengan kos RM20,000:

(1) Isu sama ada syarikat merupakan satu penukaran daripada perkongsian kepada syarikat sendirian berhad adalah tidak releven kerena ianya bukan satu-satunya elemen yang boleh membentuk pertubuhan antara pihak. Isu sama ada wujud quasi-perkongsian bukanlah satu pra-syarat untuk peruntukan adil dan saksama untuk digunakan dan mahkamah tidak perlu untuk membuat keputusan berkaitannya (lihat perenggan 30–31).

(2) Mahkamah mendapati pempetisyen dan responden pertama berkedudukan samarata dan memegang status perkongsian yang sama dalam syarikat yang mana pempetisyen dan responden pertama akan memegang syer dalam jumlah yang sama telah dibuktikan oleh pempetisyen (lihat perenggan 35).

(3) Fakta bahawa memorandum dan artikel tidak mengiktiraf pegangan saham melalui amanah tidak menghalang mahkamah daripada mengiktiraf pembentukan satu amanah sekiranya fakta membuktikannya berdasarkan prinsip undang-undang amanah (lihat perenggan 38).

(4) Pempetisyen tidak menguruskan syarikat untuk tempoh sepuluh tahun terdahulu. Pempetisyen hanya menyatakan dalam emel bahawa dia bersedia untuk mengambil alih pengurusan syarikat berkuatkuasa tahun 2018 kerana jadual perniagaan responden pertama yang sibuk yang jelas

menunjukan pempetisyen tidak menguruskan syarikat daripada awal sepertinya yang dikatakan. Lanjutan itu, pempetisyen tidak mengambil bahagian dalam pengurusan syarikat dengan memohon untuk dokumen berkaitan dengan perkara tertunggak. Walhal, pempetisyen dikecualikan daripada menguruskan syarikat tersebut sepertimana boleh dilihat daripada pelbagai emel daripada pempetisyen kepada responden pertama yang mana pempetisyen memohon dokumen berkaitan dengan perkara tertunggak dan agar ianya diuruskan (lihat perenggan 43–46).

(5) Rekod sezaman tidak menyatakan apa-apa kehilangan kepercayaan atau kebuntuan pengurusan tidak diterjemahkan kepada fakta atau merupakan keterangan bahawa kehilangan kepercayaan atau kebuntuan pengurusan tidak wujud. Mahkamah juga tidak bersetuju dengan pengataan responden bahawa matlamat utama pempetisyen adalah untuk menggulungkan syarikat dengan menjual pemilikan 49% dalam syarikat atas syaratnya sendiri sahaja. Mahkamah juga mendapati bahawa dalam memfailkan petisyen tidak menunjukan bahawa responden membiarkan kehilangan kepercayaan sepertimana yang didapati mahkamah melalui pelbagai emel (lihat perenggan 48 & 50–51).

(6) Responden pertama gagal untuk menyelesaikan akaun yang menyebabkan audit kewangan dan pulangan cukai syarikat tidak boleh dihantar dan kegagalan atau kengganan untuk berkerjasama dengan pempetisyen berkaitan degan perkara tertunggak merupakan sebab sebenar kegagalan hubungan. Adalah munasabah bagi pempetisyen untuk tidak lagi meneruskan dengan hubungan tersebut. Daripada fakta, adalah jelas bahawa hubungan antara pihak-pihak telah bertambah buruk sampai ketahap yang pihak-pihak tidak lagi boleh berhubung antara satu sama lain dan akan menyebabkan syarikat tidak boleh berfungsi sebagai satu entiti komersial kerana wujud kehilangan kepercayaan dan keyakinan antara pihak-pihak (lihat para 55 & 57).]

Cases referred to

Dato' Ting Check Sii v Marine Utama Sdn Bhd & Anor [2013] 9 MLJ 527; [2013] 1 LNS 1351, HC (refd)

Ebrahimi v Westbourne Galleries Ltd [1972] 2 All ER 492, HL (distd)

Emporium Jaya (Bentong) Sdn Bhd (in liquidation) v Emporium Jaya (Jerantut) Sdn Bhd [2002] 1 MLJ 182; [2002] 3 CLJ 10, HC (refd)

Loch & Anor v John Blackwood Ltd [1924] AC 783, PC (refd)

Ng King Chong & Anor v Ooi Kim Geik & Ors [2019] 2 MLJ 398; [2019] 2 CLJ 246, CA (refd)

Perak Integrated Networks Services Sdn Bhd v Urban Domain Sdn Bhd (on behalf of themselves and Pins OSC & Maintenance Services Sdn Bhd through derivative action) & Anor [2018] 4 MLJ 1; [2018] 5 CLJ 513, FC (refd)

Tai Hean Leng @ Tek Hean Leng v New Future Capital Sdn Bhd [2018] MLJU 1599; [2018] 1 LNS 1647, HC (refd)

Tay Bok Choon v Tahansan Sdn Bhd [1987] 1 MLJ 433; [1987] CLJ Rep 24; [1987] 1 CLJ 441, PC (refd)
Varusay Mohamed Shaik Abdul Rahman v SVK Patchee Bros (M) Sdn Bhd [2002] 3 MLJ 674; [2002] 3 CLJ 741, CA (refd)
Yap Lai Seng v High-On Industries Sdn Bhd & Anor [2015] MLJU 2032; [2016] 1 AMCR 146, HC (refd)
Yenidje Tobacco Company, Limited, Re [1916] 2 Ch 426, CA (refd)

Legislation referred to

Companies Act 1965 (repealed by the Companies Act 2016)
Companies Act 2016 ss 346, 465(1)(f), (1)(h)

Annou Xavier (Dinesh Athinarayanan with him) (Azri, Lee Swee Seng & Co) for the petitioner.
Azlan Zainal (Zainal Abidin & Co) for the respondents.

Nadzarin Wok Nordin JC:

[1] In this winding up petition ('petition'), the petitioner, one Williams Boniface Mobin Roy ('petitioner') is seeking to wind up the third respondent, Pine Treasure Sdn Bhd ('company') pursuant to s 465(1)(f) and (h) of the Companies Act 2016 ('the CA 2016') on the grounds, inter alia, that:

(a) there is a mutual breakdown of trust between the petitioner and the first respondent, Abdul Sani bin Kudus ('R1');

(b) there is a management deadlock of the company; and

(c) there is no possibility for the company to carry on its business operations.

[2] The petitioner thus seeks in his petition that:

(a) it would in the circumstances be just and equitable to wind up the company as the affairs and business of the company could no longer be carried out effectively;

(b) an independent auditor be appointed by the court to conduct and carry out a special audit of all the accounting records of the company and to carry out a valuation of the company and its properties; and

(c) that the properties in the name of the company be sold with net proceeds shared between the petitioner and the second respondent, Ruhana bt Hashim ('R2') equally.

A BACKGROUND

[3] The petitioner is a Singaporean citizen and a director and shareholder of the company whilst R1, who is also a Singaporean citizen, is a director of the company as at to date.

B

[4] R2 is a Malaysian who is a director and shareholder of the company and the wife of R1.

C [5] The company is a private company limited by shares and was incorporated on 23 May 1994 under the Companies Act 1965 ('the CA 1965') with an original authorized capital of RM100,000 divided into 100,000 shares of RM1 each. The total issued capital is RM2.

D [6] The company was established, inter alia, to carry on business 'to purchase or otherwise acquire for investment land, factories, houses, buildings, plantations and immovable property of any tenure or any interest therein and any moveable property of any description or any interest therein and to create and sell freehold and leasehold ground rents and to make advances upon the

E security of land or house or other property of any interest therein and generally to sell, lease or exchange land and house and other property whether real or personal and whether for valuable consideration or not'.

F [7] The current directors of the company at the time of filing the petition are the petitioner, R1 and R2, with the petitioner holding 49,000 shares representing 49% equity in the company and R1 holding 51,000 shares representing 51% equity in the company.

G THE PETITIONER'S SUBMISSIONS

[8] It was alleged by the petitioner that the sole and primary business of the company was to collect rental from properties and had no active and new business or staff or employees on its payroll.

H

[9] The petitioner further contends that on 22 June 1994, four new directors were appointed to the company who were R1, the petitioner, R2 and one Roniza bt Hashim and that on 27 February 1995, the company's issued capital was increased to 100 ordinary shares of RM1 each and the paid capital

I was RM100 which were allotted to the petitioner who held 48 shares and R2 who held 50 shares.

[10] Subsequently on 16 November 1995, it was submitted by the petitioner that the company's issued capital was increased to 100,000 ordinary shares of

RM1 each and the paid up capital was RM100,000 with 48,951 of the shares of the company being allotted to the petitioner and 50,949 of the shares of the company being allotted to R2.

[11] On 20 March 2012 Roniza bt Hashim resigned as a director of the company.

[12] It was submitted by the petitioner that the company was formed as a quasi-partnership between the petitioner and R1 wherein all day to day management of the company including collecting of documents and preparation of accounts were all managed and handled by R1.

[13] The petitioner submits that since 22 June 1994, it was mutually agreed by R1 that the petitioner and R1 would be of equal standing and hold equal partnership status in the company where both the petitioner and R1 would hold the shares in equal proportions. Consequently, the petitioner contends that as the petitioner and R1 are foreigners, both the petitioner and R1 agreed to appoint R2 as a director and shareholder holding 51% shares with the 1% addition to be held in trust for the petitioner.

[14] The company has three properties registered under its name ('properties'), being:

(a) unit 11–02, Menara Melawangi Amcorp Trade Centre;

(b) unit 11–03, Menara Melawangi Amcorp Trade Centre; and

(c) unit 12–06, Menara Melawangi Amcorp Trade Centre.

[15] It was also contended by the petitioner that the properties were at all material times rented out and rent was collected from the tenants of the said properties.

[16] The petitioner thereafter submits that between 22 July 2016 and 23 July 2016 the petitioner contacted R1 by email informing him that they should update all the company's documentation and bank statements for the past five years as well as to settle any outstanding tax payable ('outstanding matters') and had requested R1 to forward to him the deed of release of the properties and the bank statements for the last five years ending June 2016.

[17] By another email dated 15 August 2016 R1 informed the petitioner that R1 had appointed one Messrs JB Lau & Khoo as the auditors of the company ('auditor') and one Fastrack Corporate Services as the company secretary ('company secretary') to deal with the issues pertaining to the company's accounts, secretarial and tax issues. This the petitioner contends was done by

R1 to enable the outstanding matters to be handled properly in accordance with proper accounting standard and better transparency.

[18] The petitioner alleges that the auditor and company secretary were thereafter unable to provide any updates on the outstanding matters despite carrying out its internal investigations and secretarial works which persisted until around February 2017 when R1 informed the company secretary that the petitioner will be calling to clarify the status of the company.

[19] It was thereafter alleged by the petitioner that R1 sent a text message to him intending to close down the company in order to avoid tax payments which shocked the petitioner who disagreed to the same and demanded that the accounts of the company be finalised and resolved and kept in proper order and that the tax be paid accordingly.

[20] The petitioner states that the company secretary had informed him that the company secretary needed certain documents from R1 in order to complete the company's accounts before it can then file the audit and tax returns, wherein the petitioner then engaged the assistance of the company's former company secretary, one TK Lim ('TK Lim') to update the company's accounts.

[21] The petitioner then contends that TK Lim had informed him that R1 had omitted to file any audited accounts or income tax returns to Lembaga Hasil Dalam Negeri ('LHDN') for and on behalf of the company since its incorporation wherein the petitioner instructed the said TK Lim that his services will be retained to update and file the necessary documents with the relevant authorities. This can be seen at exh WBR17 of the petition. It was also alleged by the petitioner that a large quantity of the company's bank statements were missing and TK Lim was therefore unable to complete the bookkeeping of the company, and of which the petitioner had attempted to obtain from R1 but that R1 failed and/or refused to obtain the missing bank statements.

[22] It was thereafter submitted that the petitioner informed R1 of his intention to sell his shareholding in the company and that R1 thereafter made an offer to purchase the petitioners shares in the company thus evincing an intention that R1 no longer wish to proceed with their partnership and that the same had broken down irretrievably as per exh WBR18 in the petition.

[23] The petitioner alleges that despite repeated requests and demands to R1 to solve the outstanding matters, R1 had failed and/or refused to cooperate to resolve the same which showed that there is a deadlock in the management of the company. As a result of the alleged delay, the petitioner submits that a directors meeting was held on 20 July 2018 wherein the petitioner, R1, TK

Lim, one Ms Lai and the company secretary were in attendance after which the outstanding matters were allegedly still not settled despite various attempts by the petitioner to do so.

[24] It was also contended by the petitioner that R1 had attended a meeting with the petitioner's solicitors to resolve the impasse between the parties but R1 rejected any form of settlement and refused to give any explanation on the account and outstanding matters. Thereafter the petitioner states that his solicitors ('solicitors') had sent a number of letters and emails to the company secretary, Elite Corp, R1 and the other respondents respectively seeking, inter alia, for the financial statements, accounts and bank statements of the company and that the company secretary had only on 1 October 2019 responded to the said solicitors, albeit with incomplete documents at seen in exh WBR32 of the petition confirming, inter alia, that the financial statements, accounts and audited financial statements were not available and that there had been no filing of taxes with LHDN.

R1 AND R2'S SUBMISSIONS IN OPPOSITION

[25] The respondents allege that the petition did not state that there was a pre existing partnership or prior business relationship between P and R1 and that as the petitioner had alleged that the day to day management of the company was under the care of R1, the petitioner had no right to participate in the conduct of the business which the petitioner was now complaining.

[26] It was also contended by the respondents that the petitioner did not explain why the company had four directors instead of the usual two directors in a small private company of this nature or why when it was alleged by the petitioner that both the petitioner and R1 would hold the shares in equal proportion, then why was there no equal representation of the parties on the board of directors of the company.

[27] It is also submitted by the respondents that:

(a) the company was not a conversion of a partnership into a private limited company but a freshly incorporated company;

(b) the alleged trust in the sense of R2 holding 1% of the shares in trust for the petitioner contradicts article 6 of the company's memorandum and articles which does not recognise shareholding by way of a trust;

(c) for all intents and purposes the company is a foreign controlled company and that as such goes against the policy of the Foreign Investment Committee ('FIC') which amounted to a deception perpetrated against the Malaysian government by the petitioner and as

such the petitioner did not come with clean hands in this instance and cannot insist on the company being wound up;

(d) the petitioner's contention that R1 had made an offer to purchase the petitioners shares in the company thus evincing an intention that R1 no longer wish to proceed with their partnership and that the same had broken down irretrievably was only made after the petitioner informed R1 of his intention to sell his shareholding in the company and that in the circumstances the petitioner's contention that the partnership had broken down irretrievably was not made out;

(e) the petitioner had in fact taken an active interest and participated in the management of the company by requesting for the documents in respect of the outstanding matters and appointing TK Lim thereto thereafter and that R1 had undertaken the responsibility of the management of the day to day operations of the company as the petitioner was residing in Singapore;

(f) the petitioner unilaterally appointing Reapfield Real Estate Agent to sell the assets of the company;

(g) the petitioner was managing the company for the first ten years;

(h) as the petitioner was not excluded from managing the company, there was no prejudice to the petitioner;

(i) the contemporaneous records do not mention any breakdown of trust or management deadlock and there is no evidence of the petitioner being shut out from the administration of the company;

(j) R1 was at a disadvantage when he attended the meeting at the solicitors office as he was not informed that he had a right to be represented by solicitors and thus he was deprived of legal representation and that R1 had only short notice of the meeting to be held on 28 August 2019 as the letter from the solicitors was only on 21 August 2019;

(k) the petitioner's primary objective to wind up the company was to sell his 49% shareholding in the company solely on his terms;

(l) disputed affidavit evidence do not support the petitioner's case and the petitioner has failed to establish his case under s 465(1)(f) and (h) of the CA 2016 and the missing bank statements were due to the petitioners own fault as he was managing the company for the first ten years;

(m) the delay in filing the petition shows that the petitioner condoned the breakdown in relationship; *I disagree with this contention and I find from the various emails as exhibited in the petition and previously mentioned above, all of which are not rebutted by any evidence from R1, that the petitioner in fact had tried to sort the matter out with R1 but R1 had refused to cooperate with him*;

(n) the true reason for the petitioner wanting to exit from the company was due to pressure from his family members to end the matter and not because of the alleged breakdown between the petitioner and R1; *I find from the evidence before this court that R1 had failed to resolve the accounts which caused the financial audit and tax returns of the company being unable to be submitted and the failure and/or refusal of R1 to cooperate with the petitioner with regards the outstanding matters as evident in the numerous emails from … to … as the true reason for the breakdown in relationship. It is in my considered view reasonable for the petitioner in such a situation to no longer wish to proceed with the relationship/association with R1*;

(o) the petitioner had completely ignored the sale of unit 12–06 in the petition and to mention the advance of RM10,000 from the company to the petitioner;

(p) the petitioner had reneged on his agreement that the matter be referred to arbitration; and

(q) R1 and R2 are willing to acquire the petitioner's shares subject to the valuation of shares to be determined by an independent arbitrator to be agreed by the parties.

COURTS FINDINGS

[28] Section 465(1)(f) and (h)CA 2016 provides that:

(1) The Court may order the winding up if:

(f) the directors have acted in the affairs of the company in the directors' own interests rather than in the interests of the members as a whole or acted in any other manner which appears to be unfair or unjust to members;

(h) the Court is of the opinion that it is just and equitable that the company be wound up;

[29] Following from the above provisions, I will now address the issues raised in this petition and the respondents contentions thereto.

[30] As to the issue of whether the company was a conversion of a partnership into a private limited company, I hold that that this is irrelevant to the matter before me as this is not the only element which can form an association between the parties as suggested by the respondents. It is my view that the passage cited by the respondent in *Ebrahimi v Westbourne Galleries Ltd* [1972] 2 All ER 492 at para 8 of their written submissions at encl 30 only gave an example of where this can happen but did not rule out that it will not happen in other situations. In fact, in *Ebrahimi* the court therein being the House of Lords had also given an example that an agreement or understanding

that some maybe sleeping members and others participate in the conduct of the business would be a consideration which the court can take into account to determine the basis of the parties association.

[31] I further hold that whether there exists a quasi-partnership in this matter before me is not a pre-condition for the just and equitable provision to be invoked and that I need not decide on the same. In the Federal Court decision in *Perak Integrated Networks Services Sdn Bhd v Urban Domain Sdn Bhd (on behalf of themselves and Pins OSC & Maintenance Services Sdn Bhd through derivative action) & Anor* [2018] 4 MLJ 1; [2018] 5 CLJ 513 it was made clear that the element of a quasi-partnership enumerated by Lord Wilberforce in *Ebrahimi* are not pre-conditions before the 'just and equitable' provision can be relied on and where it was stated as follows:

> [70] Lord Wilberforce went on to enumerate a number of elements typically present where the 'just and equitable' ground is invoked:
>
> The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence — this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company — so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere.
>
> It is these, and analogous, factors which may bring into play the just and equitable clause, and they do so directly, through the force of the words themselves.
>
> [71] It is noted that these elements are non-essential, and are not to be interpreted as pre-conditions before the just and equitable clause can be relied upon: *Tien lk Enterprise Sdn Bhd & Ors v Woodsville Sdn Bhd* [1995] 1 MLJ 769 at p 776; [1995] 1 LNS 99.

[32] See also the case of *Yap Lai Seng v High-On Industries Sdn Bhd & Anor* [2015] MLJU 2032; [2016] 1 AMCR 146, where there was a breakdown in the relationship and the parties were no longer on talking terms. The court found it just and equitable to wind up the company as it would be difficult for the parties to be working together again. At para [25] of the judgment, the learned judge held:

> The company still owns the land estimated to be worth between RM1m and RM2,400,000 based on the offer. The parties are no longer on talking terms. There has been a breakdown of mutual trust and confidence between the parties. The partnership or quasi-partnership between the petitioner and the second respondent has broken down. It would be difficult for both of them to be working together in the company or to enhance the interest of the company: see *Ebrahimi v Westbourne Galleries Ltd* [1972] 2 All ER 492; *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1

MLJ 433; [1987] CLJ Rep 24; [1987] 1 CLJ 441; *Tan Kim Hor & Ors v Tan Heng Chew & Ors* [2009] 4 MLJ 358; [2009] 2 CLJ 242.

[33] The reasoning in *Yap Lai Seng* is in line with the English case of *Re Yenidje Tobacco Company, Limited* [1916] 2 Ch 426 where the relationship had broken down to the extent that they were not on speaking terms. In winding up the company, Lord Cozens-Hardy MR at pp 430–431 held:

> In those circumstances, supposing it had been a private partnership, an ordinary partnership between two people having equal shares, and there being no other provision to terminate it, what would have been the position? I think it is quite clear under the law of partnership, as has been asserted in this Court for many years and is now laid down by the Partnership Act, that that state of things might be a ground for dissolution of the partnership for the reasons which are stated by Lord Lindley in his book on Partnership at p 657 in the passage which I will read, and which, I think is quite justified by the authorities to which he refers: 'Refusal to meet on matters of business, continued quarrelling, and such a state of animosity as precludes all reasonable hope of reconciliation and friendly co-operation have been held sufficient to justify a dissolution. It is not necessary, in order to induce the Court to interfere, to show personal rudeness on the part of one partner to the other, or even any gross misconduct as a partner. All that is necessary is to satisfy the Court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it'.
>
> Now here we have this fact. Mr Rothman has commenced an action charging Mr Weinberg with fraud in obtaining the agreement under which he, Rothman, sold his business to the company. I ask myself the question: When one of the two partners has commenced, and has not discontinued, an action charging his co-partner with fraud in the inception of the partnership, is it likely, is it reasonable, is it common sense, to suppose those two partners can work together in the manner in which they ought to work in the conduct of the partnership business?
>
> Is it possible to say that it is not just and equitable that that state of things should not be allowed to continue, and that the Court should not intervene and say this is not what the parties contemplated by the arrangement into which they entered? They assumed, and it is the foundation of the whole of the agreement that was made, that the two would act as reasonable men with reasonable courtesy and reasonable conduct in every way towards each other, and arbitration was only to be resorted to with regard to some particular dispute between the directors which could not be determined in any other way. Certainly, having regard to the fact that the only two directors will not speak to each other, and no business which deserves the name of business in the affairs of the company can be carried on, I think the company should not be allowed to continue.

[34] These cases were in fact also cited by Wong Chee Lin JC (as she then was) in *Tai Hean Leng @ Tek Hean Leng v New Future Capital Sdn Bhd* [2018] MLJU 1599; [2018] 1 LNS 1647 where Her Ladyship had allowed a petition grounded on just and equitable grounds.

[35] I also find that the petitiohers contention that the petitioner and R1 would be of equal standing and hold equal partnership status in the company where both the petitioner and R1 would hold the shares in equal proportions as being proven by the petitioner based on exh WBR8 of the petition which evidences that the petitioner in his email of 1 January 2018 had reiterated the 50:50 shareholding as agreed between the petitioner and R1 but this does not, as far as the evidence before this court shows, seem to have been rebutted by R1. In fact, as early as the email of 23 July 2016 at exh WBR10 of the petition, the petitioner had referred to the fact that they were equal partners but R1 had not at any time refuted the same.

[36] I further observed that in R1's email of 2 January 2018 to Peter aka TK Lim, R1 mentions that he does not have any objection to the 50:50 shareholding and he had also expressly stated at para 2 of the said email that 'please transfer Ruhana Hashim shares to my name to reflect the 50/50 ownership between Mr Williams and me' which in my considered opinion shows the true intent of the parties at the time of incorporation of the company as if it was indeed otherwise as contended by the respondents solicitors, then R1 would not have so easily conceded to the petitioners request for the same.

[37] This can also be seen in another email of 1 January 2018 and 13 January 2018 as well as 15 January 2018 at exh WBR20 and the email of 2 August 2019 at exh WBR27 where the same statement was reiterated by the petitioner and in exh WBR28 by the solicitors letter dated 21 August 2019 to the respondents. These evidence in the form of the respective numerous emails is in this courts view, sufficient to establish the equal partnership status in the company.

[38] On the issue of the alleged trust in the sense of R2 holding 1% of the shares in trust for the petitioner contradicts article 6 of the company's memorandum and articles ('M&A') which does not recognise shareholding by way of a trust, I hold the fact of the M&A stating that the company will not recognise a trust created, does not prevent this court from recognizing the creation of a trust should the facts prove the same based on accepted principles of the law of trust. The articles of association at para 6 on the same also states ' … except only … pursuant to any order of the court' which I hold denotes that the said article recognises the courts power to find or declare a trust in respect of the shares.

[39] I further find that the respondent's contention that for all intents and purposes the company is a foreign controlled company and that as such goes against the policy of the Foreign Investment Committee ('FIC') which amounted to a deception perpetrated against the Malaysian government by the petitioner and as such the petitioner did not come with clean hands in this

instance and cannot insist on the company being wound up, is contradictory of the respondent's own stand that it was not a 50:50 partnership, and which would tantamount to an oxy moronic statement which would cancel out the respondents own submission that the petitioner was only a 49% shareholder in the company. In any event, I find that the said contention was also not pleaded in the respondent's affidavits and therefore such contention cannot be relied on by the respondent. I would also add that the respondent's contention as indicated would also implicate the respondents, even if the court had accepted the allegation, which it does not.

[40] With regards the petitioner's contention that R1 had made an offer to purchase the petitioners shares in the company thus evincing an intention that R1 no longer wishes to proceed with their partnership and that the same had broken down irretrievably; I have examined exh WBR13 which was an email from the petitioner to R1 dated 22 July 2016 and in another earlier email dated 12 September 2017, at exh WBR18, from the petitioner to R1, the petitioner had indicated that he was in a discussion with his brother-in-law and daughter to purchase his 50% share in the company which R1 had replied via email on 13 September 2017 that he was not aware of the petitioner's intent to sell out. I find that R1 had failed to recall exh WBR13 which was an email from the petitioner to R1 dated 22 July 2016 where the same was already mentioned.

[41] I also note that in exh WBR8 of the petition, ie an email of 2 January 2018, the petitioner was intending to transfer 30% of his 50% share in the company to one Jina and Ameeta ('proposed transferees'). The said email had also specifically referred to a previous intention by R1 to buy over the petitioners shares in the company.

[42] I find that the offer by R1 was only made after the petitioner informed R1 of his intention to sell his shareholding in the company and that in the circumstances the petitioner's contention that the partnership had broken down irretrievably based on this offer by R1 was not made out.

[43] It is my finding that the petitioner was not managing the company for the first ten years as submitted by the respondents as alleged in para 8 of R1's affidavit in reply at encl 11 which only alleges the same but did not provide any evidence/proof of that fact. From the evidence before this court at exh WBR21 the petitioner had stated in an email to R1 dated 10 April 2018 that he was 'prepared to take over the administration' of the company with effect from year 2018 due to R1's busy business schedule, which clearly shows that the petitioner was not managing the company earlier as alleged.

[44] I further find that the petitioner had not participated in the management of the company merely by requesting for the documents in

respect of the outstanding matters and appointing TK Lim thereto thereafter. The respondents contention that R1 had undertaken the responsibility of the management of the day to day operations of the company as the petitioner was residing in Singapore is illogical as R1 was also resident in Singapore and as such this argument cannot be accepted by this court. This court in fact finds that it was only as of 12 April 2018 that the petitioner indicated that he wished to take over the administration of the company as can be seen in the email to TK Lim from the petitioner dated 12 April 2018 at exh WBR21 of the petition, but R1 had disagreed to the same as evident in R1's email of 10 June 2018 to the petitioner at exh WBR23.

[45] As to the respondents contention that the petitioner unilaterally appointed Reapfield Real Estate Agent to sell the assets of the company; this court finds that R1 had stated in his email of 2 January 2018 at exh WBR8 of the petition that he will abide by the same and which the court finds that he did not object to such an appointment. As such this argument by the respondents is also untenable.

[46] It is also my finding that the petitioner was excluded from managing the company which can be seen by the numerous emails from the petitioner to R1 wherein the petitioner had made repeated requests for the documents pertaining to the outstanding matters and for the same to be sorted out. Emails were sent by the petitioner to R1 on 24 August 2016, 25 October 2016 and 7 November 2016 as seen at exh WBR12, and on 16 November 2016 and 6 March 2017 as seen at exh WBR12, on 1 August 2016 as seen at exh WBR13, on 16 March 2017 as shown at exh WBR16, emails on 1 January 2018, 12 January 2018, 15 January 2018 as seen at exh WBR20, email of 27 April 2018 and 9 May 2018 as seen at exh WBR22, emails of 11 May 2018 and 9 June 2018 as shown at exh WBR23, and the email of 2 August 2019 at exh WBR27. There would have been no necessity for the petitioner to send so many emails to R1 had the petitioner been managing the company and this court thus finds that the said evidence leads this court to the conclusion that the petitioner had been shut out from the administration of the company.

[47] I also hold that if indeed the petitioner was managing the company as alleged by R1 then R1 could have instructed the company secretary to mention in the letter given by the company secretary dated 1 October 2019 at exh WBR32 that R1 was unabie to get the bank statements due to petitioner managing the company, but the same was not done. This contention could also easily have been raised at the directors meeting by R1 but again was never raised, which would lead to the finding by this court, on a balance of probabilities, that such allegation was in fact untrue.

[48] I further hold that the fact that the contemporaneous records do not mention any breakdown of trust or management deadlock does not translate into the fact or is evidence that such breakdown of trust or management deadlock does not exist. This court would have to look at the entire evidence presented before it to determine if there was indeed a breakdown of trust or management deadlock. In the Privy Council case of *Tay Bok Choon v Tahansan Sdn Bhd* [1987] 1 MLJ 433; [1987] CLJ Rep 24; [1987] 1 CLJ 441 it was stated that:

> At the end of the day the judge must decide the petition on the evidence before him. If allegations are made in affidavits by the petitioner and those allegations are credibly denied by the respondent's affidavits, then in the absence of oral evidence or cross-examination, the judge must ignore the disputed allegations. The judge must then decide the fate of the petition by consideration of the undisputed facts.

[49] On the issue that R1 claims he was at a disadvantage when he attended the meeting at the solicitors office as he was not informed that he had a right to be represented by solicitors and thus he was deprived of legal representation and that R1 had only short notice of the meeting to be held on 28 August 2019 as the letter from the solicitors was only issued on 21 August 2019; I find no reason why R1 could not have engaged solicitors in that period between 21 August 2019 and 28 August 2019 or to seek to adjourn the meeting. In any event the letter dated 21 August 2019 from the solicitors, at exh WBR28 of the petition, was not a demand to be present at the office of the solicitors but only a proposal to have a meeting between the parties for a settlement meeting fixed for 28 August 2019.

[50] I also do not agree with the respondents contention that the petitioner's primary objective to wind up the company was to sell his 49% shareholding in the company solely on his terms. I say this as the petitioner could have gone to make a claim under s 346 of the Companies Act 2016 ('remedy in cases of oppression') to compel R1 to purchase his shares, which petitioner did not do.

[51] I also hold that the delay in filing the petition does not show that the petitioner had condoned the breakdown in relationship as I find from the various emails as exhibited in the petition and previously mentioned above, all of which are not rebutted by any evidence from R1, that the petitioner in fact had tried to sort the matter out with R1 but as R1 had refused to cooperate with him, the petitioner had then proceeded with the petition herein and even then after his solicitors had given ample warning to R1 as seen in the solicitors letters dated 21 August 2019 at exh WBR28 and on 24 September 2019 as per exh WBR31.

[52] For the sake of completeness, this court fails to see how a failure by the petitioner to mention in the petition the sale of unit 12–06 in the petition and

to mention the advance of RM10,000 from the company to the petitioner as contended by the respondents amounts to the petitioner coming to court with unclean hands. With respect, the failure to mention such facts, does not in this courts view, form a salient fact which relates to the petitioner's case or the issue of whether there was a breakdown in the relationship between the parties. See *Emporium Jaya (Bentong) Sdn Bhd (in liquidation) v Emporium Jaya (Jerantut) Sdn Bhd* [2002] 1 MLJ 182; [2002] 3 CLJ 10.

[53] It is not the law that all facts have to be divulged to the court in cases where a party is applying to wind up the company on 'just and equitable' grounds but the law is only that all material facts have to be divulged so as to come within the 'clean hands' principle. What is a material fact will of course depend on the facts and circumstances of each particular case. In any event, this court finds that there is no evidence of the said sale as alleged and that R1 had himself stated at para 26 of his AIR at encl 11, that there was no sale and purchase agreement to that effect but claims that the alleged purchaser, one Ownerslink Sdn Bhd ('Ownerslink') is in fact the beneficial owner. The resolution dated 1 April 2012 referred to by R1 in support of his contention at exh SAK7 of the said encl 11 only refers to a proposed sale to the said Ownerslink, but there is no proof that the sale was in fact proceeded with and/or finalised.

[54] I have also had the opportunity to examine the whatsapp messages between R1 and the petitioner in exh SAK8 of encl 11 with regards the allegation that the petitioner had reneged on his agreement that the matter be referred to arbitration, and I find that the alleged agreement to arbitrate is non-binding on the parties as there is nothing in any proper document or contract which states that the parties should go to arbitration in the event of a dispute over the company's matters. At its highest, I am of the view that these were statements made in the heat of the moment by the respective parties and should not be held against either party and that the dispute concerning the company can effectively be determined by this court vis a vis the petition and accordingly the petitioner had not behaved unfairly.

[55] Based on my findings above, I find from the undisputed evidence before this court that R1 had failed to resolve the accounts which caused the financial audit and tax returns of the company being unable to be submitted and the failure and/or refusal of R1 to cooperate with the petitioner with regards the outstanding matters as evident in the numerous emails from August 2016 to August 2019 as the true reason for the breakdown in relationship. It is in my considered view that it is reasonable for the petitioner in such a situation to no longer wish to proceed with the relationship/association with R1. Accordingly, the contention that the petitioner wanting to exit from the company was due

to pressure from his family members to end the matter and not because of the alleged breakdown between the petitioner and R1 is not accepted by this court.

[56] In *Ng King Chong & Anor v Ooi Kim Geik & Ors* [2019] 2 MLJ 398; [2019] 2 CLJ 246 the Court of Appeal has held that 'the winding up of a company on the just and equitable ground is one of the remedies available to a shareholder, as opposed to a creditor of the company, in the event of a shareholders' dispute or where there is some form of wrongdoing by the directors. The court's jurisdiction is usually invoked where the company is a quasi-partnership, as in the present case, but can also apply to other circumstances as case laws have shown. Common examples of when this jurisdiction has been invoked is where there is a deadlock in management (see *Dato' Ting Check Sii v Marine Utama Sdn Bhd & Anor* [2013] 9 MLJ 527; [2013] 1 LNS 1351) or where there is a breakdown in mutual trust and confidence among the shareholder's (see *Varusay Mohamed Shaik Abdul Rahman v SVK Patchee Bros (M) Sdn Bhd* [2002] 3 MLJ 674; [2002] 3 CLJ 741)'.

[57] From the facts as presented to me by the petitioner and R1, I find that it is quite apparent that the relationship between the parties have deteriorated to a point where the parties can no longer communicate with each other and which would, in my view, cause the company to be unable to continue to function as a commercial entity in particular to purchase properties for investments and to collect rentals thereto, as there appears to now have been a breakdown in the mutual trust and confidence between the said parties grounded on the conduct of R1 in regard to the company's business.

[58] I humbly quote Lord Shaw of Dunfermline in *Loch & Anor v John Blackwood Ltd* [1924] AC 783 at p 788 in which he said as follows:

> It is undoubtedly true that at the foundation of applications for winding up, on the 'just and equitable' rule, there must lie a justifiable lack of confidence in the conduct and management of the company's affairs. But this lack of confidence must be grounded on conduct of the directors, not in regard to their private life or affairs, but in regard to the company's business. Furthermore the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company. On the other hand, wherever the lack of confidence is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the latter, and it is under the statute just and equitable that the company be wound up.

[59] I hereby find that the petitioner has made out a case based on the 'just and equitable' principles in s 465(1)(h), and I am thus of the opinion that I need not go into the merits of the petitioners case based on s 465(1)(f). I accordingly grant an order to wind up the company as per prayer 54(b) of encl

1 and costs of RM20,000. I further order that the official assignee is to be appointed as the liquidator as per the earlier order of this court dated 13 February 2020 in respect of prayer of the amended petition. All other prayers are dismissed.

Petition allowed and winding up order granted with costs of RM20,000.

Reported by Izzat Fauzan